IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No. 6876 of 2005
Date of decision : 13.10.2006.

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Parties Name

M/s. Auto Vision India Priave Limited.
..... Petitioner

vs.

Sub divisional Officer (Operation), Sub Division,
,DHBVNL, Dharuhera and others
.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Manoj Bajaj, Advocate
for the petitioner.

Sh. C.B. Goel, Advocate
for the respondents.

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S.N. Aggarwal, J.

The petitioner is a company registered under the Companies Act, 1956 and is manufacturing automotive parts for two-wheelers. It has electricity connection bearing account No. A-60/MS with the sanctioned load of 44.885 KW. On 7.11.2004 there was electrical fault for which a complaint was lodged with respondent No.1. On 9.11.2004 the Executive Engineer- respondent No.2 visited the premises of the petitioner-company and rectified the default. On 14.11.2004 the respondents visited the premises of the petitioner – company and told its functionaries that one seal was damaged. On

15.12.2004 a notice was served on the petitioner-company and it was replied that no seal of MCB box was broken. On 27.12.2004 the respondents prepared the inspection report regarding the breaking and repressing of the seal of MCB box and as per their report the connection load was assessed at 154.389 KW. Notice dated 28.12.2004 was served on the petitioner-company and an amount of Rs. 31 lacs was levied on account of alleged theft of energy calculated @ Rs.20,000/- per KW for 155 KW. Objections were filed by the petitioner-company on 30.12.2004 under Section 126 (3) of the Electricity Act,2003 against the order of assessment dated 28.12.2004 but to no effect. An appeal was filed under Section 127 of the Electricity Act, 2003 on 11.1.2005 with the Chief Engineer, but in vain. Then the petitioner-company filed the civil suit for declaration with consequential relief of mandatory injunction challenging the inspection report and the imposition of penalty amount of Rs.31 lacs. An application for interim stay was also filed. The said application was dismissed by the learned trial Court vide impugned order dated 15.3.2005.

The appeal was filed by the petitioner-company against the said order. It was also dismissed by the learned Lower Appellate Court vide order dated 26.9.2005.

Hence, the present petition.

The first submission of the learned counsel for the petitioner was that on 9.11.2004, the officer after rectifying the default had demanded some illegal gratification, which was refused by the petitioner-company. On 14.11.2004 again the gratification was

demanded by the respondents. But they were not obliged. Therefore, a false inspection report was prepared by which it was alleged that the seals of the MCB box were found broken.

This submission has been considered. These allegations are of no consequence. These allegations are made by the petitioner-company after the penalty was imposed. No complaint was made to the senior officers of Dakshin Haryana Bijli Vitran Nigam Ltd., against the officials who demanded illegal gratification. Therefore, these allegations appear to be without any basis.

The further submission of learned counsel for the petitioner was that calculation of penalty amount has been wrongly made. It has been made under the provisions of Section 152 of the Electricity Act, 2003. This section deals with the situation where the defaulter intends to compound the offence. But in the present case the petitioner-company is specifically denying if any theft of electricity was committed by the petitioner-company or by its functionaries. Therefore, the provisions of Section 152 of the Electricity Act, 2003 are not applicable to the present situation.

The learned counsel for the respondents also could not point out any specific provision by which the penalty was to be calculated in case of theft of electricity.

It was further submitted by the learned counsel for the petitioner that the penalty was to be imposed on the load sanctioned as per the latest instructions released by the respondents. However, at the time when offence was allegedly committed, the instructions dated 29.11.2004 were applicable. Therefore, prima facie these

instructions are to govern the calculation of the amount of penalty and as per these instructions the amount on account of theft of electricity has to be made on the basis of sanctioned load in KW or the load detected at the time of checking or maximum load recorded in the meter during last six months, whichever was higher. Since as per the version of the respondents, the petitioner-company was found running the unit on the extended load of 154.389 KW, therefore, the load detected at the time of checking was to be multiplied with the rate of penalty amount.

The further submission of learned counsel for the petitioner was that in a connected matter, a company placed in the same situation has been allowed to run the unit on furnishing two sureties. In the present case sureties have already been furnished by the petitioner. Therefore, the respondents be directed to restore the electric connection of the petitioner.

This submission has been considered. The situation varies from facts to facts of each case. In the present case, there are serious allegations against the petitioner-company. Against the sanctioned load of 44.885 KW the petitioner-company was running the unit extended at the rate of 154.389 KW i.e. 155 KW.

Since this Court is not satisfied with the procedure by which the amount of penalty has been calculated, therefore, this petition is accepted in part, requiring the petitioner to deposit a sum of Rs.3.10 lacs being 10% of the amount demanded. This amount shall be deposited by the petitioner-company with the respondents within four weeks and if the petitioner succeeds in the civil suit filed by it against

the respondents in the Civil Court, then it would be entitled to get back the amount with interest @ 6% per annum. The surety already furnished by the petitioner-company shall also continue. After depositing the amount, the petitioner-company would be entitled to file an application for restoration of the electric connection which shall be accepted by the Dakshin Haryana Bijli Vitran Nigam Ltd., and the electric connection of the petitioner-company shall be restored.

The learned trial Court shall expedite the disposal of the civil suit.

(S.N.Aggarwal)
Judge

13.10.2006.
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